

117187

DECISION



20420
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

Reedinger

FILE: B-202149

DATE: December 30, 1981

MATTER OF: Lieutenant Colonel William J. Fields, USAF,
Deceased

- DIGEST: 1. A member of the Reserve component of the Air Force was a participant in the Survivor Benefit Plan (SBP), 10 U.S.C. 1447-1455, as amended by Public Law 95-397. Two women claim the annuity as widow. The first wife had sued him during his lifetime for support and a declaration that his Mexican divorce was a nullity. Since that action was dismissed with prejudice following support settlement, thereby precluding her from relitigating the question of her marital status, she would also be precluded from validly asserting a right to the SBP annuity as the member's widow.
2. A member of the Reserve component of the Air Force was a participant in the Survivor Benefit Plan (SBP), 10 U.S.C. 1447-1455, as amended by Public Law 95-397. Two women claim the annuity as widow. The member's first marriage was allegedly terminated by a Mexican divorce which the first wife has challenged. Since such divorces are not generally recognized by State courts a ruling by a court of competent jurisdiction as to the validity of the relationships involved is usually required (55 Comp. Gen. 533 (1975)). Since the first wife's suit asserting the continued validity of the first marriage was dismissed with prejudice she cannot question the validity of the second marriage. Accordingly, the claim of the second wife may be allowed.

This action is in response to a letter from the Air Force Accounting and Finance Center, requesting a decision as to the proper recipient of an annuity under the Survivor Benefit Plan (SBP), 10 U.S.C. 1447-1455, as amended by Public Law 95-397,

B-202149

approved September 30, 1978, 92 Stat, 843, believed due in the case of the late Lieutenant Colonel William J. Fields, USAF, who died on October 18, 1978. This matter has been assigned Air Force submission number DO-AF-1358 by the Department of Defense Military Pay and Allowance Committee.

According to the submission, Colonel Fields was a member of the United States Air Force Reserve and who, but for age, was fully qualified for non-Regular retirement under chapter 67, title 10, United States Code, on October 1, 1978, the effective date of Public Law 95-397.

Under the provisions of Public Law 95-397, members of a Reserve component, who but for age would be entitled to retired pay, are authorized to elect to participate in the SBP prior to age 60. Apparently, Colonel Fields did not have the opportunity to elect coverage prior to his death at age 58. It is reported that the Secretary of the Air Force made a posthumous election on his behalf to show that he selected immediate coverage for spouse.

Subsequent to that action, annuity application forms were received from Alice Fields and Barbara Fields, both claiming entitlement to an SBP annuity as Colonel Fields' widow. The documents of record show that the member married Alice in New Jersey on May 25, 1943, and secured a Mexican divorce from her in 1968. On August 22, 1969, he married Barbara in Virginia. In November 1969, Alice instituted a matrimonial action against Colonel Fields in the Superior Court of New Jersey, her residence State, seeking support from him and an adjudication that the Mexican divorce was a nullity. That action was dismissed with prejudice on April 1, 1971.

Following the member's death in 1978, Alice Fields filed suit in the United States District Court against Barbara Fields for the proceeds of Colonel Fields' Servicemen's Group Life Insurance policy. While the issue of the Mexican divorce was again raised by Alice, the judgment rendered in the case was that Barbara Fields was entitled to the insurance proceeds without regard to the question as to the validity of

B-202149

the Mexican divorce, since Barbara had been named the beneficiary of those proceeds. The court also said that, because of the finality of the New Jersey court judgment, Alice Fields was precluded from either attacking the validity of the Mexican divorce or asserting that Barbara Fields was not validly married to Colonel Fields at the time of his death.

Based on the foregoing, the accounting and finance officer requests a determination as to which of the claimants is entitled to the annuity as the member's widow.

The Survivor Benefit Plan, 10 U.S.C. 1447 et seq., as amended by Title II of Public Law 95-397, authorizes members of a Reserve component, who were fully qualified for Reserve retirement pay to elect immediate coverage under the SBP for spouse and dependent children. Section 1450 of title 10, United States Code, provides in part:

"(a) Effective as of the first day after the death of a person to whom * * * [the Plan] applies * * * a monthly annuity under section 1451 of this title shall be paid to--

"(1) the eligible widow or widower;"

The term "widow" is defined in subsection 1447(3) as meaning the surviving wife of a person who, if not married to the person at the time he became eligible for retired or retainer pay--

"(A) was married to him for at least one year immediately before his death;
* * *"

As a general rule, State courts of the United States have refused to recognize the validity of Mexican divorces. See 13 ALR 3d 1419, 1425. Accordingly, we have held that the validity of the marriage should be established by a court of competent jurisdiction in the United States. 25 Comp. Gen. 821 (1946); 36 id. 121 (1956); and 55 id. 533 (1975); B-195250, January 23, 1980.

B-202149

In the present case, the matrimonial action instituted by Alice Fields was dismissed with prejudice, thereby precluding her from relitigating the question of her marital status. Based upon that, a United States District Court held that the first wife could not question the validity of the second marriage. Accordingly, it is our view that Barbara Fields is entitled to an SBP annuity as the surviving spouse of Colonel Fields.

Navy R. Van Cleave
For Comptroller General
of the United States